

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHRIS J. JACOBS III,

Petitioner,

v.

MARATHON CO CIRCUIT COURT
and SENTENCING JUDGE
DOUGLAS FOX,

Respondents.

ORDER

16-cv-619-bbc

Petitioner Chris J. Jacobs III, a prisoner at the Columbia Correctional Institution, has filed what he has labeled as a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in which he challenges his sentence from a 1998 conviction for kidnapping and false imprisonment. Because petitioner has already filed four such petitions in this court, this petition must be dismissed.

In cases nos. 15-cv-034-bbc, 10-cv-805-bbc and 09-cv-32-bbc I reminded petitioner that he had filed a habeas corpus petition challenging this same conviction and sentence in 2006 and that that petition had been dismissed with prejudice because it was untimely. Jacobs v. Schneider, 06-cv-74-jcs, Op. & Order, dkt. #23 (W.D. Wis. Aug. 29, 2006). Under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive application in the district court unless he first obtains an order from the appropriate court of appeals authorizing the district court to consider the application, which petitioner still has not done.

A “second or successive” petition is one in which the prisoner is challenging the same conviction that he challenged in a previous petition that was decided on the merits. In re Page, 179 F.3d 1024, 1025 (7th Cir. 1999). The 2006 dismissal with prejudice for untimeliness was “on the merits” because “the [petitioner] has no further opportunity to obtain a disposition on the merits of his or her claims in the state courts.” Henderson v. Lampert, 396 F.3d 1049, 1053 (9th Cir. 2005). Accord Carter v. United States, 150 F.3d 202, 205-06 (2d Cir.1998); Hawkins v. Evans, 64 F.3d 543, 547 (10th Cir. 1995). Accordingly, petitioner cannot proceed on this petition. Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (“A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.”).

ORDER

IT IS ORDERED that the petition of Chris Jacobs III for a writ of habeas corpus is DISMISSED for petitioner’s failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A) before he filed it.

Entered this 3d day of February, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge